

1
2
3
4
5
6 **UNITED STATES BANKRUPTCY COURT**
7 **WESTERN DISTRICT OF WASHINGTON**

8 In Re:

9 RICKIE BEAVERS, SR. & MELODY
10 REGINA BEAVERS,

11 Debtors.

Bankruptcy No. 12-13824-CMA

12
13 RICKIE BEAVERS, SR. & MELODY
14 REGINA BEAVERS,

15 Plaintiffs,

16 v.

17
18 RBS CITIZENS NA

19 Defendant.
20

Adversary No. 19-01109-CMA

**MOTION AND DECLARATION
FOR ORDER OF DEFAULT AND
DEFAULT JUDGMENT**

21 **I. RELIEF REQUESTED**

22 COMES NOW the Plaintiffs, Rickie Beavers, Sr. & Melody Regina Beavers, by and through
23 their attorney of record, Jonathan Smith respectfully request that the Bankruptcy Court to
24 enter an Order of Default and Default Judgment against the defendant, RBS Citizens NA,
25 pursuant to Fed. R. Bankr. P. 7055 and Fed. R. Civ. P. 55.

MOTION FOR ORDER OF DEFAULT AND
DEFAULT JUDGMENT - 1

ADVANTAGE LEGAL GROUP
12207 NE 8TH STREET
BELLEVUE WA 98005
Tel: 425-452-9797
Facsimile: 425-440-7681

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

II. PERTINENT FACTS

2.1 On August 28, 2019, the Plaintiffs filed their Complaint for Seeking Lien Avoidance of Wholly Unsecured Lien.

2.2 The Defendant possesses a wholly unsecured second position lien against the Plaintiffs' primary residence. The first lien is held by Chase. The second lien is held by RBS Citizens NA.

2.3 The Plaintiffs estimate the value of their property to be \$132,000.00. The value of the senior lien on the property is \$196,405.00 at the time Plaintiff's Chapter 13 bankruptcy petition was filed. The second mortgage lienholder RBS Citizens NA was approximately \$24,877.00. Accordingly, there is no equity securing the Defendant's lien.

2.4 On August 29, 2019, the court fixed the response date for the Defendant's answer for September 29, 2019, in its Summons and Notice of Pretrial Conference.

2.5 On September 29, 2019, true and accurate copies of the Summons and Notice of Pretrial Conference were served on the Defendant and its Officer into the U.S. Mail, certified mail with return receipt. Proof of service is on file, herein.

2.6 As of the date of this Motion, no appearance or responsive pleading has been filed by the Defendant.

III. ISSUE PRESENTED

3.1 Whether the Bankruptcy Court should enter an Order of Default and Default Judgment when the Defendant has been properly served and failed to appear or otherwise answer the Plaintiff's Complaint within the time permitted by court rules.

IV. ARGUMENT AND AUTHORITY

4.1 Fed. R. Bankr. P. 7055 makes Fed. R. Civ. P. 55 applicable in the context of an adversary proceeding.

4.2 Fed. R. Civ. P. 55(a) permits an Order of Default to be entered “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise....”

4.3 Fed. R. Civ. P. 55(b) permits the entry of a default judgment against a party in default “[i]f the plaintiff’s claim is for a sum certain or a sum that can be made certain by computation....”

4.4 On August 29, 2019, the court fixed the response date for the Defendant's answer as September 29, 2019, in its Summons and Notice of Pretrial Conference.

4.5 On August 29, 2019, true and accurate copies of the Summons and Notice of Pretrial Conference were served on the Defendant and its Officer into the U.S. Mail, certified mail with return receipt. Proof of service is on file, herein.

4.6 As of the date of this Motion, no appearance or responsive pleading has been filed by the Defendant.

4.7 The Plaintiff is entitled to an Order of Default and Default Judgment pursuant to Fed. R. Civ. P. 55 as a just and efficient disposition of their claims against an unresponsive Defendant.

IV. PRAYER FOR RELIEF

The Plaintiff respectfully requests that the Bankruptcy Court grant this Motion and enter an Order of Default and Default Judgment in the form accompanying this Motion.

DATED this 2nd day of October, 2019.

/s/Jonathan Smith
Jonathan Smith, WSBA #27372
Attorney for Plaintiff
Advantage Legal Group
12207 NE 8th Street
Bellevue, WA 98005

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

1. I am the attorney for the Plaintiff in the above-entitled action.
2. Service of the Summons and Complaint was duly and regularly made upon Defendant on August 29, 2019.
3. Since the date of service, the Defendant, RBS Citizens, NA has failed to answer or plead in any manner. The time provided by law for doing so has expired, and the Defendant's default should now be entered, and a judgment order issued.

/s/Jonathan Smith
Jonathan Smith, WSBA #27372
Attorney for Plaintiff